

## **REMARKS**

### **Status of Claims**

Upon entry of this amendment, claims 43-44, 46-48, and 50-59 will be pending in this application, claims 45, 49, and 60-61 being cancelled in this paper. Claim 43 is amended to further clarify that the method is directed to reducing the appearance of wrinkles and/or fine lines and to incorporate the language recited in cancelled claim 60. Claim 58 is amended to reflect the amendments to claim 43. Accordingly, no new matter has been added by way of these amendments.

Applicants have not dedicated or abandoned any unclaimed subject matter, and have not acquiesced to any rejections made by the Patent Office. Applicants reserve the right to pursue prosecution of any presently excluded claim embodiments in future continuation and/or divisional applications.

### **Claim Rejections - 35 U.S.C. § 103**

Claims 43-61 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over PCT Application Publication WO9938483 in view of U.S. Patent No. 3,978,213 to Lapinet et al. ("Lapinet"), U.S. Patent No. 5,314,873 to Tomita et al. ("Tomita"), WO 9204420, WO9727835, U.S. Patent No. 4,496,536 to Moller et al. ("Moller"), JP 09030946 ("Tanaka") and WO 9617605 to Babish ("Babish"). Applicants traverse this rejection.

To establish a *prima facie* case of obviousness, it is elementary that the combination of cited references must teach or suggest all the claim limitations. See *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1999). In the Office Action mailed September 9, 2008, the Examiner failed to cite any reference, or combination of references, that discloses andrographolide to treat wrinkles and/or fine lines on the skin. Accordingly, the Examiner has not established a *prima facie* case of obviousness and, as such, the rejection is deficient.

The Examiner acknowledges that "the prior art does not expressly disclose the claimed method of improving the aesthetic appearance of the skin in which the composition contains andrographolide." (OA, p. 3). Not only is such a method not expressly taught by the cited references, it is also not implicit in the teachings of those references. In fact, the only cited reference that could remotely relate to the use of andrographolide for topical application to skin is Tanaka. As described by the Examiner, Tanaka "teaches the use of extracts of Andrographis

in oil-in-water preparations for skin lightening, which inhibits melanin formation and tyrosinase.” It is not seen that skin whitening would in any manner suggest efficacy against fine lines and/or wrinkles. Moreover, there is nothing in the topical application for skin whitening of Tanaka that would inherently practice the claimed method because there is no disclosure in Tanaka that the treated skin is affected by fine lines and/or wrinkles. See Perricone v. Medicis Pharm. Corp., 432 F.3d 1368, 1379 (Fed. Cir. 2005) (holding that a prior art suggestion to apply a particular material to skin in general did not invalidate claims directed to the application of the material to a specific type of skin, viz., sunburned skin.). Tanaka only suggests using Andrographis extract for whitening skin and there is no basis for concluding that the skin treated by Tanaka suffered from wrinkles and/or fine lines. Further, none of the other art cited overcomes this deficiency of Tanaka.

Accordingly, absent an understanding that andrographolide is effective in reducing wrinkles and/or fine lines, there would have been no motivation to employ andrographolide to wrinkled skin. It is axiomatic that “[o]bviousness cannot be predicated on what is not known at the time the invention was made, even if the inherency of a certain feature is later established.” In re Rijckaert, 9 F.2d 1531 (Fed. Cir. 1993); MPEP 2141.02(V). Since none of the cited art, taken alone or in any permissible combination, remotely suggest the use of andrographolide compounds in reducing the appearance of wrinkles and/or fine lines, reconsideration and withdrawal of this ground of rejection is respectfully requested.

The Examiner’s statement that “[s]ince there is no evidence that the utility of andrographolide is critical to the invention, the fact that the prior art discloses a different reason for using andrographolide in a skin treating composition does not overcome the rejection.” (OA, p. 5). This statement is wholly without legal merit. The treatment of wrinkles and/or fine lines with andrographolide compounds is precisely what is claimed by independent claim 43 and there is simply no basis for the Examiner to completely ignore the express limitations of the claims.

Having distinguished independent claim 43 from the cited art, the claims depending therefrom are patentable for at least the same reasons. However, Applicants reserve the right to separately address the patentability of these claims in the future, should that be necessary.

**CONCLUSION**

Applicants respectfully submit that the instant application is in condition for allowance. Entry of the amendments and an action passing this case to issue is therefore respectfully requested. In the event that a telephone conference would facilitate examination of this application in any way, the Examiner is invited to contact the undersigned at the number provided.

Respectfully submitted,

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